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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 518

W. L. GOOGINS,

Petitioner,

vs.

E. W. HABLE AND SONS,

Respondent

PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE TENTH SUPREME JUDICIAL DISTRICT OF TEXAS AND BRIEF IN SUPPORT THEREOF.

CECIL C. ROTSCH,
DAVID L. TISINGER,
Counsel for Petitioner.

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PETITION FOR A WRIT OF CERTIORARI TO THE COURT OF CIVIL APPEALS FOR THE TENTH SUPREME JUDICIAL DISTRICT OF TEXAS.

To the Honorable Chief Justice of the Supreme Court of the United States and the Associate Justices of Said Court:

W. L. Goggins, praying that writ of certiorari issue to review the final judgment and decree of the Court of Civil Appeals for the Tenth Supreme Judicial District of Texas entered in that certain cause lately pending in said Court, being styled W. L. Googins, Appellant *vs.* E. W. Hable and Sons, Appellees, and numbered 2923 on the docket of said Court, shows:

Summary Statement of the Matter Involved

During World War II, Googins purchased certain heavy equipment from Hable. This equipment included several large tractors and bulldozers, and Googins paid Hable $48,200.00 as the agreed purchase price.

The sale was subject to the Emergency Price Control Act and certain regulations thereunder.

Googins thought the equipment was "warranted", but Hable says the sale was "as is".

The "as is" price, according to O. P. A. regulations, was $15,062.50 less than the $48,200.00 paid in cash by Googins. Googins here seeks to recover that difference, $15,062.50. (The equipment proved defective.)

That difference of $15,062.50 represents the difference between the "warranted" and the "as is" price. The courts below allowed Hable, nevertheless, to keep that difference in spite of finding that the sale was "subject to O. P. A.", and in spite of Hable's own pleading that the sale was "as is".

1. As to Jurisdiction

The courts below held that Googins was not damaged because the equipment had a "market value" equal to the purchase price of $48,200.00 (R. 4, 9). They recognized that the sale was subject to O. P. A. regulations, and said regulations made the maximum price $15,062.50 less than the price actually paid in cash, but, on the apparent theory that O. P. A. regulations could not put a ceiling on the "market", and thus that the common law measure of damages—the difference between market value and price paid—showed no loss to Googins, denied recovery.

The "*black* market" was thus legitimatized in Texas, subject to correction by this Honorable Court—The Supreme Court of the United States of America.

Jurisdiction of this case, therefore, results from the power of this Court to decide the Federal Question: Does the Price Control Act, and regulations thereunder, 50 U. S. C. A., App., 925e, M. P. R. 136, in effect January 1944, Sec. 1390.11, (a), (b), and (c), fix an enforceable ceiling on market value in cases involving breach of contract?

2. As to The Merits

Googins paid more than $15,000.00 in excess of the lawful price for "as is" equipment. He thought the equipment was impliedly warranted, but Hable says it was not warranted. When the equipment proved unsatisfactory, Googins sought restitution for his damages. These were refused on the "as is" theory.

Googins' theory is that, even though the equipment were assumed to be mechanically perfect, he is still entitled to recover his $15,062.50, the excess over that lawfully chargeable—as for money had and received—to prevent unjust enrichment.

Googins does not sue here for treble damages under the statute, but he asserts a statutory *right* to be charged properly or to be delivered the statutory warranty. The consequent damages, resulting from such cause of action, are fixed by the principles of common law. The courts below held the statutory remedy for treble damages to be exclusive.

Jurisdiction to Review

Jurisdiction of this Court is invoked under Title 28, Sec. 1257(3). The judgment of the Court of Civil Appeals became final, with the refusal of rehearing of the Application for Writ of Error from the Supreme Court of Texas on October 10, 1951.

The Question Presented

1. Whether the Court of Civil Appeals erred in finding and enforcing a market value in excess of the ceiling price permitted under the Emergency Price Control Act, and in refusing Googins recovery of such excess.

2. Whether the Court of Civil Appeals erred in holding that the Emergency Price Control Act does not allow a common law suit for an overcharge.

Reasons Relied On for the Allowance of the Writ

Googins paid more than the law allowed on an "as is" sale. He paid more than the maximum price. He has been refused recovery on the ground that the "market value" was equal to the purchase price.

The "market" thus recognized was the "black" market—not the O. P. A. market.

If the State Courts may thus ignore the Federal regulations, any real enforcement will become impracticable. The precise question here presented, however, for all its importance seems never to have been previously offered for decision by this Court.

It was not shown that Googins knowingly paid more than the lawful price. Actually, he thought he was getting *warranted* equipment.

The statute says he was overcharged. Unless that statute is to be spurned as unworthy, Googins is, as a matter of law, entitled to recover the amount of the overcharge.

Petitioner respectfully prays that a writ of certiorari be issued out of and under the seal of this Court, directed to the Court of Civil Appeals for the Tenth Supreme Judicial District of Texas, commanding that Court to certify and to send to this Court for its review and determination, on a day certain to be named therein, a full and complete transcript of the record and all proceedings in the case num-

bered 2923, W. L. Googins, Appellant *vs.* E. W. Hable and Sons, Appellees; and that the judgment of such Court be reversed, and for such other relief as Petitioner shall be entitled, and all costs.

Respectfully submitted,

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SUPREME COURT OF THE UNITED STATES

OCTOBER TERM, 1951

No. 518

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E. W. HABLE AND SONS,

Respondent

BRIEF IN SUPPORT OF PETITION FOR WRIT OF CERTIORARI

I

Opinion of Court Below

The opinion of the Court of Civil Appeals is reported in 237 S. W. (2d) 705 (R. 4-9).

II

Jurisdiction

The basis upon which the jurisdiction of this Court is being invoked is stated in the Petition, page 3.

III

Statement of the Case

Sufficient here is the "Summary Statement of The Matter Involved" in the Petition, ante pages 2-3.

IV

Specification of Errors

1. The Court of Civil Appeals erred in holding that "market value" in a breach of contract suit could exceed the maximum ceiling price.

2. Such Court erred in holding that the statutory remedy of treble damages was exclusive when applied to this action.

V

Summary of Argument

1. Market value could not exceed the ceiling price.

2. The penalty provision of the statute for treble damages did not exclude an action for recovery of actual damages, the amount to be determined at common law.

VI

Argument

1. Market value could not exceed the ceiling price.

It is judicially established, by the trial court's "Findings of Fact" (R. 2-4), that Googins paid $48,200.00. By such judicial findings it is also established that the sale involved was subject to O. P. A. regulations. Furthermore, it is undisputed that the price paid exceeded the maximum price by $15,062.50.

The sale being subject to O. P. A. regulations, neither party can now be charged with any intentional violation of

the regulations. Googins thought the sale was of *warranted* equipment; Hable thought it was an "as is" deal.

The price paid exceeded the legal maximum for "as is" equipment by $15,062.50.

(a) Googins purchased equipment which was impliedly *warranted.*

(b) The warranty was breached by outright repudiation.

(c) Under O. P. A. regulations the maximum value for unwarranted equipment was 55% of the base price, and, the measure of damages for breach of warranty being the difference between the contract price and the market value, Googins was consequently entitled to recover at least the difference between 80% and 55%.

When a warranty is breached there is a partial failure of consideration and the measure of the amount of that failure is "the difference between the contract price and the market value." *Gutta Percha and Rubber Manufacturing Company* v. *City of Cleburne,* 102 Tex. 36, 112 S. W. 1047, 1048.

As the Court stated in *Heisig Rice Company* v. *Fairbanks Morse & Company,* 100 S. W. 959, 960:

> "The purchaser retained the machinery, and, if the warranty of fitness and quality was breached, his measure of damages for the breach or partial failure of consideration was the difference between the market value of the machinery delivered and that contracted for, and such consequential damages as the facts authorized." 100 S. W. 960.

The trial court was of the opinion that Googins could not recover damages in that he found that the equipment was actually "rebuilt" by Hable and qualified according to O. P. A. standards. This finding of the trial court was erroneous since the equipment was undisputedly defective. For our purposes in discussing this first point of error, however, it is immaterial whether the equipment would qualify as "rebuilt" or not.

Hable chose to *repudiate* the warranty. Such repudiation was as serious a breach of contract as was the delivery of defective machinery.

> "A breach of contract is defined as 'a non-performance of any contractual duty of immediate performance.' It appears, however, that a sales agreement may be breached not only when one of the parties fails timely to perform a duty imposed upon him thereby, or when he wrongfully prevents performance by the other party, *but also when he repudiates the contract prior to the time fixed for performance.*" 37 Tex. Jur. 352, 353. (Emphasis supplied.)

The true inquiry was not about the performance of the machinery or its ability to perform. The true inquiry, the warranty being breached by absolute repudiation, was whether the *market value* was less than the contract price. Furthermore, inasmuch as Hable disavowed any warranty, the market value could not have exceeded the O. P. A. maximum for an "as is" sale.

The trial court was of the opinion that the equipment had a market value equal to the contract price because he found that the equipment was "rebuilt". He overlooked, however, that "rebuilt" equipment was something more than merely equipment which had been dismantled and so put back together that all of its worn parts were replaced with new ones. "Rebuilt" equipment, according to the mandate of the O. P. A., carried a warranty for *sixty days performance.*

Unless equipment carried a warranty the regulation required that it be sold "as is" or simply as "second-hand".

The maximum price under the law for second-hand unwarranted machinery was fixed by regulation at 55% of the base price. Since the evidence is undisputed that the $48,200.00 paid by Appellant was eighty per cent, the difference of 25% or $15,062.50 was due Googins as a matter

of law, as the amount which the contract price exceeded the market.

The trial court overlooked the very fundamental principle that a breach of contract may rest not only in a failure of performance, but also in a refusal to perform. The repudiation of a contract obligation gives rise to a cause of action for damages, just as does non-performance or insufficient performance. *Moore* v. *Jenkins,* 109 Tex. 461, 211 S. W. 975.

It was one thing for Googins to receive delivery of reconditioned machinery carrying no warranty, and quite another to receive the same equipment carrying a warranty for sixty days performance. The fact that the quality and condition of the machinery might be equally good in both instances is immaterial. So also is it immaterial whether the unwarranted equipment actually performed for sixty days according to standard required of warranted equipment. *The promise* to deliver warranted equipment was a substantial part of the consideration for which Googins contracted. When that *promise* was repudiated the consideration partially failed.

The consideration passing between the parties was not simply an exchange of money for property but more than that—it was an exchange of *promises.* The breach of contract occurred not simply because of a defect of performance but because of a *violation of a promise.*

A bilateral contract is an exchange of *promises.* (10 Tex. Jur. 14). Googins promised to pay a cash sum of $48,200.00. In return Hable promised to deliver *warranted* equipment. The equipment delivered was not warranted. The promise was therefore broken.

The warranty consisted of a collateral promise (which was to continue in effect for sixty days) to be responsible if the equipment failed to perform. When the equipment was delivered Hable immediately disavowed the collateral promise. Googins did not therefore receive all he was en-

titled to receive. He was delivered the equipment, but he was not delivered the collateral promise of warranty.

The Price Control Act required a warranty.

The Hables now concede that they repudiated that warranty.

The Hables do not contest the rule of law to the effect that the repudiation of a contractual obligation is a breach of the same just as much as is non-performance of it. They contend, however, that in spite of the repudiation we were not damaged because, as the trial court found, the market value of the equipment was equal to the purchase price.

To support this assertion they rely on cases such as *Ablon* v. *Hawker,* 200 S. W. (2d) 265, and *Betts* v. *Hitchcock,* 197 S. W. (2d) 878. These cases, say the Hables, hold that O. P. A. prices and market value are not synonymous.

Each and all of such cases represent situations where the owner of personal property has had the same destroyed, or has lost it by involuntary means as through theft, conversion, etc. The courts, quite naturally, have been unwilling in such instances to hold that one deprived of his property involuntarily should be limited to an OPA ceiling, provided he can show that its real value was greater. As those cases point out, the situation does not involve a *sale,* and that it is only with *sales* that the OPA has concern. Also, as those cases further point out, insurance losses are *expressly excluded* from OPA regulations. *Sun Ins. Ofc.* v. *Rupp,* 64 Fed. Supp. 533. Furthermore, such cases expressly recognize that in circumstances involving a *sale* the OPA prices, and the OPA prices only, reflect the maximum *market values.*

Where there is a sale involved, the OPA price must, of necessity control. This is the rule with respect to involuntary judicial sales. *Bowles* v. *Texas Liquor Control Board,* (Fifth Circuit), 148 Fed. (2d) 265. It does not apply in the case of a fire loss of an automobile simply because in that

situation the owner is not *selling*. *General Exchange* v. *Tierney*, (Fifth Circuit) 152 Fed. (2d) 224. As the Oklahoma court said in *Connecticut Fire Ins. Co.* v. *Youngblood*, 184 Pac. (2d) 795, actually in any true sense market value is always controlled by the OPA prices. The explanation for the rule that such prices will not be applied in the case of involuntary losses is not truly that such prices do not reflect maximum market value but rather that the courts are unwilling for a person to be deprived of his property at a price lower than its intrinsic value to him. *Sun Ins. Ofc.* v. *Rupp*, 64 Fed. Supp. 533.

Market value means the value obtainable at sales in the open market. To say that such value could be in excess of the price which the law allows seems to us the rankest kind of absurdity. It presupposes not only recognition of the illegal but approval of the illegal. *And the courts hold, in cases involving sales, that market value cannot exceed an OPA ceiling. Norwood Lbr. Co.* v. *McKean* (3rd Cir.) 153 F. (2d) 753, 757.

In *United States* v. *Sanitary District of Chicago* (7th Cir.) 149 F. (2d) 951, the court said:

> "(O.P.A. regulations) fixed a price of one cent per barrel as the maximum price to be charged for the storage of alcohol. This figure became the maximum lawful *market price.*" (149 Fed. 955).

One of the paramount purposes of the establishment of the Office of Price Administration was to offset inflation in the prices of machinery used in defense work. This Court judicially knows that tractors and bulldozers, such as are involved in this law suit, constituted equipment which made possible a large part of our effort during the last war. The literally hundreds of air fields, army camps, and military depots would have been utterly impossible to build without the aid of such equipment.

The purposes and policies of the Emergency Price Control Act are stated in Section 901a, Title 50, APP, USCA, as follows:

"(a) *The Congress affirms.*

> "(1) that because of abnormally excess spending power in relation to the presently available supply of commodities, rapid attainment of production equal to the public demand is one of the necessary and urgent objectives for the prevention of inflation * * *. And for the further purposes of protecting the real value of benefits provided by law for veterans and their dependents, of keeping faith with purchasers of United States War Bonds, and of making possible a successful transition to a peace time economy. * * *"

Of course, one of the costs which the government especially desired to prevent from being inflated was the cost of national defense. Sales such as those from Hable to Googins were, therefore, at the very core and center of the objective of price control legislation. To say that market value could exceed the minimum prices established by law is, in this case an affront to common sense. The San Antonio Court of Civil Appeals has held that rental value can not exceed O.P.A. ceiling prices. *Wooten* v. *Maierhofer*, 190 S.W. (2d) 513. There is no possible ground for a different rule here.

This is the real point in the case. It presents the question of the effect of OPA ceiling prices as evidence of value. See Note, *OPA Ceiling Prices as Evidence of Value*, 60 Harvard Law Review, 132 (1946).

The trial judge purported to find as a fact that the reasonable market value of the machinery was the same as the contract price, $48,200.00. The machinery did not carry the prescribed guaranty; hence, according to the law of the United States it could not have been sold for more than $33,137.50, in the condition it was delivered to the buyer. Thus, a difference of $15,062.50 between what the trial judge

said was the price that a willing buyer would pay to a willing seller and the price that the United States of America said would, if "willfully" exceeded, justify the imposition of a fine of $5,000.00 or imprisonment for two years, or both! 50 U.S.C. App., Sec. 925(b). We believe that the trial court's "finding" and the action of the Court of Civil Appeals in expressly affirming it, in the face of the showing that the machinery was subject to the 55% maximum price, is not particularly conducive to state-national harmony in our relatively well settled federal form of government. As said in *U. S.* v. *Delano Park Homes, Inc.*, 146 F. (2d) 473, 474 (C.C.A. 2d, 1944), "* * * when competent authority has fixed prices at a maximum, or has denied owners some specific use of their property, it is patently a disregard of its authority, either directly to allow a higher price on condemnation, or to allow the price to be figured in disregard of the limitation imposed."

And we think that the authoritative case law establishes that market value *cannot* be more than the OPA price ceiling. Such was the decision in *Miller* v. *Long-Bell Lumber Co.*, 222 S.W. (2d) 244, by the Supreme Court of Texas in 1949. That was a suit in *quantum meruit* for the reasonable value of lumber furnished to the defendant. The jury found that it was a certain amount, but the OPA price ceiling was $790.69 less than that, whereupon the court rendered judgment for the "reasonable value" found by the jury reduced to the amount that a willing seller *could* legally sell to a willing buyer.

Another authoritative decision is *Wooten* v. *Maierhofer*, Tex. Civ. App., 190 S.W. (2d) 514, error refused w.m. (1945), favorably commented upon in Note, OPA Ceiling as Evidence of Value, 60 Harvard Law Review 132, 138 (1946). In that case the sole and only question was whether the reasonable rental value of premises wrongfully withheld could be more than the ceiling price; that was the only ques-

tion in the case. It was squarely held it could not; the Supreme Court of Texas' refusal of a writ of error necessarily approved that holding. See Rule 483, Texas Rules of Civil Procedure, as it read in 1945.

2. The penalty provision in the Statute for treble damages did not exclude an action for recovery of actual damages, the amount to be determined at common law.

This action was for restitution—not for a penalty. The Hables have sought (and, so far, successfully) to show that this is actually just a penalty action and therefore barred by the one-year statute of limitation.

The Emergency Price Control Act itself provides for a remedy for overcharges in the case of a consumer purchaser. No provision is made for a purchaser who is not a consumer. He is left to the common law remedy, and the cases clearly demonstrate that he is entitled to *restitution for the amount of the overcharge.*

For example, in the case of *Compania Importadera* (Sup. Ct. N.Y., 1945), 58 N.Y.S. (2d) 745, the purchaser of steel for use in the course of his business sued for damages sustained by reason of overcharges. The Court stated the question for decision to be whether: "* * * * A buyer in the course of a trade or business from whom the seller has extracted an excess over the ceiling price may recover such excess despite the absence from the statute of any provision conferring such right".

In a well-reasoned opinion the Court held that plaintiff was entitled to recover. At page 745 of its opinion the Court said:

> "It is a general and long settled rule that where a statute commands or prohibits a thing, a person injured by another's failure to do the thing commanded or by his doing the thing prohibited, has a cause of action against the violator of the statute for the ensuing damages."

And the Court further reasoned:

> "The liability for penalty of treble damages * * * was inserted in order to enlist the help of consumers in discouraging violations because Congress foresaw that the task of enforcing the act against retailers would be too vast for the Administrator to accomplish without such help (*Bowles* v. *American Steel*, 78 U.S. App. D.C. 238, 139 F. (2d) 377, 379, cert. den. 322 U.S. 730, 64 S. Ct. 947, 88 L. Ed. 15653) and it is inconceivable to me that Congress intended to enlist the help of consumers in that way and yet intended to leave to administrative action alone the vastly greater task of enforcing the act against wholesalers who sell to the retailers. *The evil at which the statute is aimed is rising prices, and civil liability to refund any excess over legitimately fixed ceiling prices not only has a reasonable and just relation to avoidance of that evil, but is in my opinion one of the best means of avoiding such evil and of securing compliance with the statute.*"

And the Court held:

> "*I conclude therefore, that plaintiff and the transaction here in question have such relation to the objects and purposes of the statute that defendant's violation thereof gives rise to a cause of action for the recovery of what defendant's violation caused plaintiff to lose.*"

Another case involving this exact point is *Tuskegee Homes Co.* v. *Oswalt* (Sup. Ct. Alabama, 1946), 26 So. (2d) 865. There, in a suit by a purchaser for overcharges, the Court said:

> "To the extent that complainant is seeking recovery for the amount of his overcharges, not treble damages as a penalty, the complaint is so framed as to not be controlled by the statute (50 USCA appendix, Section 925(e)). *It is predicated to that extent solely on the theory of a common law right to recover for money obtained by a constructive fraud, which is available*

whether or not complainant purchased for use or consumption other than in the course of trade or business.''

Googins' claim here is like those in the above cases, not based on the statutory remedy. It is the assertion of a common law right and is entirely independent of the statute. The statute defines the wrong; the common law provides the remedy for its breach. Googins seeks to recover for the defendant's unjust enrichment. Googins, of course, thought he was purchasing ''rebuilt and guaranteed'' equipment within the meaning of the O.P.A. regulations. Since the Hables have disavowed any such agreement, and have chosen to treat the sale as an ''as is'' sale they cannot rightfully retain any of the purchase in excess of 55% of the O.P.A. base price.

When the Legislature gives a remedy for a right newly created, that remedy, of course, is conclusive. But where, as in this case, no remedy is provided in the statute the common law supplies the remedy. As our Supreme Court said in *House* v. *Houston Waterworks Company*, 88 Tex. 233, 31 S.W. 179, 181:

> ''Whenever a statute creates a right or duty or an obligation, then, although it has not in express terms given a remedy, the remedy which by law is properly applicable to that right or obligation follows as an incident. * * * In every case where a statute enacts or prohibits a thing for the benefit of a person, he shall have a remedy upon the same statute for the thing enacted for his advantage, or for the recompense of a wrong done to him contrary to said law.''

There must be literally hundreds of statutes on our books which do not expressly provide for a remedy. For example, the dozens and dozens of statutes regulating the use of our highways by automobiles. These statutes are commonly denominated criminal statutes and provide a criminal penalty, yet no one has ever doubted that a person injured by

reason of a violation of such statutes, as where the other party is driving over the speed limit, or driving at night without lights, or driving with inadequate brakes, has his remedy at common law.

As the writer says in 1 Am. Jur., 410:

> "As to the enforcement of a general liability created by statute and unknown to the common law, the rule is that if no remedy is provided by the statute, it may be enforced by an appropriate common law action, a definite statutory prohibition of conduct indicating an intention that the right conferred shall be enforceable by legal proceedings."

The fact that the statute gives the administrator the right to collect a penalty does not detract from the proposition that a duty is created by the statute of which Googins may take the benefit in this case. As is stated in 1 Corpus Juris 952:

> "It is a general rule, that whenever a statute imposes a duty for the benefit of particular individuals or classes of individuals, anyone within the benefit of the statute who sustains an injury by reason of a breach thereof has a right of action against the person guilty of the breach. This rule applies not only to statutory duties of public officers, but also to duties imposed by statute upon any citizen; and the private right of action is not affected by the fact that the statute also makes such breach of duty a criminal offense, *or the subject of a penalty.* Or by the fact that the statute which imposes a duty does not in terms prescribe any remedy for its enforcement or violation." (Emphasis supplied.)

The situation before us is analogous to the railroad cases. From the very beginning of Texas history, shippers have been allowed to recover illegal overcharges made for freight by carriers. 8 Tex. Jur. 201. The fact that the statutes also provide for heavy penalties for extortion has

apparently never been thought to exclude the right of simple restitution to the plaintiff who did not desire to avail himself of the statutory penalty. The statutory remedy in such cases "is not exclusive but cumulative." *Murray and Brother* v. *G.C. & S.R.R. Co.*, 63 Tex. 407, 413. The San Antonio Court held in *Galveston H. & S.C. Ry.* v. *J. H. Nations Meat and Supply Company*, 136 S.W. 833, that it was perfectly proper to sue for the overcharge without suing for the penalty.

It is a penal offense for electric light companies to overcharge a customer. 16 Tex. Jur. 236. Yet the private citizen may sue to recover the amount of the overcharge, in Texas courts. *Texas Power and Light Company* v. *Doering*, 139 Tex. 351, 162 S.W. (2d) 938. He may even recover his actual damages when other persons are *undercharged*. *Kousal* v. *Texas Power and Light Company* (Sup. Ct. of Tex.) 179 S.W. (2d) 283.

We are unable to understand on what basis the Hables can contend that the following doctrine does not apply:

> "It is a well established doctrine, both by courts of law and of equity, that, where one person has received money of another which in honesty and good conscience, he cannot retain, an action will lie by the party entitled to recover it back, and whether the action be in assumpsit or for money had and received under our code is immaterial." 29 Tex. Jur. 736, 737.

In *Henderson* v. *Jones & Laughlin Steel Corp.*, 46 Fed. 518, the court held that when a commercial purchaser bought scrap for use in its business, and was charged a price in excess of the OPA ceiling, it could set off the amount of that excess in its accounts. Surely that court would also have allowed recovery by lawsuit.

Conclusion

It is respectfully submitted that this case calls for the exercise of the supervisory powers of this Court, and that the writ should be granted.

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